

**CITY OF CARLSBAD, NEW MEXICO**

**ORDINANCE NO. 2019-\_\_\_\_**

**SINGLE-USE CARRYOUT BAG ORDINANCE**

**INTRODUCED BY:**

City of Carlsbad Beautification Sub-Committee

**AN ORDINANCE**

**RELATING TO CHAPTER 22 HEALTH & SANITATION; ESTABLISHING A NEW ARTICLE 22-94 TO BAN THE DISTRIBUTION OF SINGLE-USE PLASTIC CARRY-OUT BAGS AND ESTABLISH THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT AN ENVIRONMENTAL SERVICE FEE FOR EACH PAPER GROCERY BAG PROVIDED TO CUSTOMERS; IN ADDITION, ESTABLISH A 90 DAY IMPLEMENTATION PERIOD; AND MAKING OTHER SUCH CHANGES AS NECESSARY TO CARRY OUT THE PURPOSE OF THIS ORDINANCE FOR PAPER CARRY OUT GROCERY BAGS TO BE IMPOSED BY RETAIL ESTABLISHMENTS AND TO PROMOTE THE USE OF REUSABLE BAGS.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD:**

**Section 1. Section 22-94.1**

The governing body of the City of Carlsbad, NM finds that:

A. The majority of single-use plastic carryout bags used for shopping do not easily biodegrade and rather persist in the environment for hundreds of years, slowly breaking down through abrasion, tearing and photo degradation into toxic plastic bits that then contaminate soil and water. A risk is created for the health and safety of animals; including livestock, pets and wildlife, while entering the food web when these animals inadvertently ingest these materials.

B. It is the city's desire to protect the environment, while reducing waste, litter, and pollution in order to protect the public's health and welfare.

C. The litter problem resulting from single use plastic carryout bags is becoming

increasingly difficult to manage and has costly negative implications for tourism, wildlife and aesthetics.

D. Single-use paper grocery/merchandise bags require more resources to manufacture, transport, recycle, or dispose of than single-use plastic carry out bags, and although many of them are made from renewable resources and are less of a litter problem than single-use plastic carry out bags, and are also recyclable, studies have shown that they have a limited number of times they can be recycled, and take up more space than plastic bags.

E. To encourage the public to use reusable bags, the Single-Use Carry-Out Bag Ordinance will eliminate the use of single-use plastic carryout bags and require all retail establishments within the jurisdiction of the City of Carlsbad to assess an environmental service fee for each paper grocery/merchandise bag they provide to customers.

**Section 2. A new Section 22-94.2 is created to read:**

**Purpose:**

- A. Article 22-94 shall be cited as the "Single-Use Carryout Bag Ordinance."
- B. The production and disposal of single-use carryout bags causes significant environmental impacts including contamination of the environment, the death of animals; including livestock, pets and wildlife, through ingestion and entanglement and widespread litter. The purpose of this section is to protect, conserve and enhance the city's unique natural beauty and irreplaceable natural resources through the reduction of single-use carryout bags by encouraging the use of reusable bags.

**Section 3. A new Section 22-94.3 is ordained to read:**

**Definitions:**

*Single-use plastic carryout bag* means any carryout bag made from plastic, or any material except paper marketed or labeled as "biodegradable" or "compostable," that is neither intended nor suitable for continuous reuse as a carryout bag or that is less than 2.25 mm thick.

*Paper grocery/merchandise bag* means a paper carryout bag that has a manufacturer's stated capacity of one-eighth barrel (typical grocery store bag - 882 cubic inches) or larger.

*Retail establishment* means any retail business including, without limitation, clothing, household

goods, or personal items of any kind that sells directly to a customer. Examples include but are not limited to department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home improvement stores, liquor stores, convenience stores, and gas stations. For purposes of this Ordinance, non-profit entities that distribute food and non-food products to the needy, public eating establishments defined as restaurants, take-out food establishments, or any other business that receives 90% or more of its revenue from the sale of food which is prepared on the premises, to be eaten on or off its premises are exempt from this Ordinance.

*Reusable bag* means a bag with or without handles that is specifically designed and manufactured for multiple reuse.

**Section 4. A new Section 22-94.4 is ordained to read:**

**Applicability.**

- A. A retail establishment shall not provide a single-use plastic carry-out bag to any customer.
- B. For every paper grocery/merchandise bag provided by a retail establishment, an environmental service fee of ten cents (\$.10) shall be charged to the customer for each paper grocery/merchandise bag provided, except that retail establishments shall not collect the environmental service fee from any person with a voucher or Electronic Benefits Card issued under Women, Infants, and Children Program (WIC), the Emergency Food Assistance Program (TEFAP), Temporary Assistance to Needy Families Program (TANF), or the Federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food Stamps).

(1) Retail establishments shall indicate on the customer transaction receipt the number of recyclable paper carryout grocery/merchandise bags provided and the total amount of the environmental service fees charged.

(2) Ten percent (10%) of the environmental service fee collected by a retail establishment shall be retained by the retail establishment for administrative costs incurred by collection and reporting of the environmental service fee to the City of Carlsbad. The remainder of the environmental service fee collected shall be transmitted to the City of Carlsbad. The city shall dedicate the environmental service

fee towards environmental education programs, recycling programs, beautification projects and services provided for the public and towards the purchase of reusable bags to be provided to the public, free of charge. The City of Carlsbad shall conduct an educational campaign in both English and Spanish on this Ordinance.

(3) It shall be a violation of this Ordinance for any retail establishment to pay or otherwise reimburse a customer for any portion of the environmental service fee.

C. To further promote the use of reusable bags and reduce the quantity of single-use carryout bags entering the city's waste stream, retail establishments are encouraged to make reusable bags free or for sale at checkout counters and/or provide boxes for use at checkout counters free of charge. The City of Carlsbad is authorized to provide reusable bags for the public, free-of-charge, with specific emphasis on reaching out to reach low-income households to the greatest degree possible.

**Section 5. A new Section 22-94.5 is ordained to read:**

**Effective Dates.**

A. The Single-Use Bag Ordinance shall become effective ninety (90) days after the city council approves the ordinance for all retail establishments.

**Section 6. A new Section 22-94.6 is ordained to read:**

**Enforcement; Violations and Penalty.**

A. The City Administrator shall assign primary responsibility for enforcement of Section 22-94 and that department/division assigned shall be authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours.

B. If the assigned department/division director determines that a violation of Section 22-94 has occurred, a written warning notice shall be issued to the operator of a store that a violation has occurred and the potential penalties that will apply for future violations.

C. Any store that violates or fails to comply with any of the requirements of Section 22-94, after a written warning notice is issued for that violation shall be guilty of an infraction.

D. If a store has subsequent violations of Section 22-94 that are similar in kind to the violation addressed in a written warning notice, the following fine shall be imposed and shall be payable by the operator of the store: a fine not to exceed one hundred dollars (\$100.00) for the first violation, after the written warning notice is given.

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

F. All fines collected pursuant to Section 22-94 shall be deposited in the enforcement department/divisions' services fund to assist the department/division with its costs of implementing and enforcing the requirements of this Article.

**Section 7. A new Section 22-94.7 is ordained to read:**

**No Conflict with Federal or State Law.**

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ of \_\_\_\_\_, 2019.

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DALE JANWAY, MAYOR

ATTEST:

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NADINE MIRELES, CITY CLERK

APPROVED AS TO FORM:

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EILEEN RIORDAN, CITY ATTORNEY